

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 05-340 PJH

v.

FINAL PRETRIAL ORDER

LAVELL HOWARD,

Defendants.

1

This matter came before the court for a pre-trial conference on August 31, 2005. At the hearing, the court ruled on several evidentiary motions as stated on the record and summarized below.

Defendant's Motions in Limine

I. Motion to Produce Relevant OCC Complaints and Permission to Inquire into Relevant Complaints

The court will review the documents produced with the assistance of an SFPD custodian of records to determine which documents are responsive to defendant's requests. As noted at the hearing, the court is unlikely to admit unsustained complaints pursuant to Federal Rule of Evidence 403(b). The court reserves ruling on this issue.

II. Motion in Limine to Exclude Witnesses and Requiring Testimony of Case Agent Before Other Witnesses

For the reasons stated on the record, defendant's motion is DENIED.

III. Motion in Limine Requesting Exclusion of Expert Testimony

Defendant's motion to exclude testimony from the interstate commerce expert is DENIED as moot. Defendant's motion to exclude testimony from a fingerprint expert

1 regarding the absence of fingerprints on firearms is DENIED. However, the government's
2 expert will be limited to expert testimony based on his own experiences.

3 **IV. Motion in Limine to Exclude Currency and Marijuana Seized During Search
4 Incident to Arrest**

5 The court GRANTS defendant's motion. If necessary, the government may ask the
6 court to reconsider the issue following presentation of the defendant's case.

7 **V. Motion in Limine Requesting Exclusion of Prior Bad Acts**

8 Defendant's motion is GRANTED as no prior bad acts have been identified; however,
9 should defendant testify, evidence of a subsequent arrest may become relevant. In that case,
10 the government may request that the court revisit the issue.

11 **VI. Motion in Limine to Exclude Evidence of Priors**

12 This motion is DENIED as moot. The parties have agreed to stipulate that in eliciting
13 any information regarding defendant's prior felony convictions pursuant to FRE 609(b), the
14 government will limit its cross-examination to the fact of the convictions and will not elicit any
15 information regarding the details or nature of the convictions.

16 **VII. Motion in Limine to Exclude Undisclosed Evidence under Rule 16**

17 This motion is DENIED as moot.

18 **Government's Motions in Limine:**

19 **I. Preclude Defendant from Referencing Punishment During Trial**

20 The government's motion is GRANTED; however, the parties agree that defendant
21 may refer to the pending charges as "serious."

22 **II. Requiring Defendant to Comply with Reciprocal Discovery Requirements**

23 **A. Preclude Defendant from introducing evidence that should have been
24 produced pursuant to reciprocal discovery obligations of Rule 16(b);**

25 This motion is DENIED as moot.

26

27

28

1 **B. Requiring Production of prior statements of defense witnesses pursuant
2 to Rule 26.2**

3 The motion is DENIED as moot regarding lay witnesses, and GRANTED with respect
4 to defendant's expert witness(es).

5 **III. Motion in Limine Requesting Exclusion of Expert Testimony**

6 This motion is GRANTED in part and DENIED in part. Defendant is permitted to call
7 one expert witness ONLY regarding the habits of persons who possess contraband.

8 **IV. Motion in Limine Regarding Evidence of Third Party Culpability**

9 The motion is DENIED without prejudice at this time. The court may revisit the issue if
10 necessary.

11 **IT SO ORDERED.**



13 Dated: September 1, 2005

14

15 PHYLLIS J. HAMILTON
16 United States District Judge